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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,675	11/21/2003	Yiu Ching Liu	PCI /008	1316

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STEVEN J. ADAMSON, PC
P.O. BOX 5997
PORTLAND, OR 97228

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/719,675	Applicant(s) LIU, YIU CHING	
	Examiner Stephen J. Castellano	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/1/05</u> | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 contradicts the "bottomless" limitation of claim 1 by stating that the base member is fixedly secured to the shell.

Prior art admission:

In the previous Office action mailed May 11, 2005 the examiner set forth the following Official notice:

"Official notice is taken that the metal materials of stainless steel, aluminum, titanium, tin and alloys thereof are well known and that the ceramic materials of porcelain, stoneware, earthenware and glass are well known. It would have been obvious to modify the materials based on the teachings of the characteristics of each material

Re claims 4, 13, 17 and 22, Official notice is taken that a separate base member of metallic material is well known in this art"

Applicant hasn't seasonally challenged the Official notice. Therefore, the unchallenged Official notice will now be treated as a prior art admission.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todd and Tung in view of Hawn, Payson et al. (Payson) and Mitrovich.

Todd discloses a double walled fluid holding vessel comprising a metallic lining (6, 7) and shell (11). Tung teaches a double walled fluid holding vessel comprising a metallic lining (17) and shell (5). Todd and Tung disclose the invention except for the ceramic material of the shell and the substantially bottomless nature of the shell. Hawn, Payson and Mitrovich teach lined containers with ceramic outer shells. It would have been obvious to modify the outer shell to be ceramic as motivated by the improved visual appearance of ceramic containers. It would have been obvious to modify the outer shell to be substantially bottomless to save on material and manufacturing cost, reduce weight and simplify the invention by omitting parts deemed unnecessary.

Applicant admits that the metal materials of stainless steel, aluminum, titanium, tin and alloys thereof are well known and that the ceramic materials of porcelain, stoneware, earthenware and glass are well known. It would have been obvious to modify the materials based on the teachings of the characteristics of each material and applicant's admission.

Re claims 4, 13, 17, 22 and 27, Applicant admits that a separate base member of metallic material is well known in this art. It would have been obvious to modify the base to have a separate base member of metallic material based on applicant's admission.

Re claim 28, Official notice is taken that first and second peripherally disposed recesses located at the top and bottom portions of the shell to receive the lip and base member,

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respectively, are well known in the art. It would have been obvious to provide such recesses to form a firmly secured junction between the lining, shell and base member to prevent inadvertent separation resulting in breakage of the device, spilling of liquids and soiling of clothes and furnishings.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harnden, Jr. et al. (Harnden) in view of Todd.

Harnden discloses the invention except for bottom opening of the shell. Todd teaches a shell having a bottom opening in the form of a recess. It would have been obvious to include a bottom recess/opening to reduce the weight of the bottom as motivated by the ease of carrying lighter objects.

Applicant's arguments filed August 1, 2005 have been fully considered but they are not persuasive.

The 112, 2nd paragraph rejection of claims 4 and 21 will be maintained since applicant hasn't provided sufficient reasoned argument to rebut the established confusion as to whether the shell is bottomless or has a bottom. If a container has a removable bottom or a bottom formed from a separate piece of material, it should not be described as bottomless because it, as a matter of fact, has a bottom which is clearly claimed.

Applicant submits that plastic and ceramic materials are too diverse in properties to be substituted for each other. More importantly, applicant believes that the combination of a metallic liner with a ceramic shell would not be feasible. Harnden, Jr. et al. (Harnden) discloses a metal liner (see col. 12, lines 21-22) and a glass or ceramic shell (see col. 12, lines 9-14). Plastic or ceramic materials are taught for the shell (see col. 12, lines 9-14).

Fildes Declaration:

The declaration doesn't provide an appropriate nexus between the claims of the application by indicating the claim language by reciting the claim language verbatim within the declaration and by indicating which of the claims of the '675 application are being referred to in item 3 and which of the claims are being allegedly infringed/conflict (there is no infringement until a patent issues) in item 4.

Applicant sets forth that several entities have introduced vessels that allegedly conflict with his claims. Where is the evidence? What was introduced, patents, pre-grant publications, products on sale, industry publications, web sites, etc? When were they introduced? Who was the inventor? Applicant submitted the names of three assignees, it is being assumed. The assignees may all be selling the same product. The product may have been patented early enough and prior to applicant's filing date to be considered a statutory bar.

What is "commercial significance?" Does applicant mean "commercial success?" Three competitors introduction of vessels conflicting with the claims of the present invention is not sufficient evidence of commercial significance or commercial success. Where are sales figures of the claimed device, e.g., price, gross sales, etc? How do the sales compare to similar devices which the claimed device would replace? How much advertising and promotion of the claimed device in comparison to other devices? What about a cost analysis with research and development, material costs, manufacturing costs, storage costs, shipping costs, advertising costs, etc. versus gross sales? What was the profit?

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THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc